

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE:

SELF-GENERATION

DOCKET NO. RMU-00-8

ORDER ADOPTING RULES

(Issued October 11, 2000)

Pursuant to the authority of Iowa Code §§ 17A.4, 476.1, and 476.41 (1999), the Utilities Board adopts the amendments attached hereto and incorporated by reference. These rules amend and clarify language contained in 199 IAC 15.1 and 15.11(5) with respect to the definition of "qualifying facility" and an alternate energy production facility's ability to self-generate. The reasons for adopting these amendments are set forth in the attached notice of intended action.

IT IS THEREFORE ORDERED:

1. A rule making, identified as Docket No. RMU-00-8, is adopted.
2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a notice in the form attached to and incorporated by reference in this order.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr.
Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 11th day of October, 2000.

UTILITIES DIVISION [199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 476.1, and 476.41, the Utilities Board (Board) gives notice that on October 11, 2000, the Board issued an order in Docket No. RMU-00-8, In re: Self-Generation, "Order Adopting Rules." The amendments to rule 199—15.1(476) and subrule 15.11(5) clarify that a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978 (PURPA) may or may not be an alternate energy production facility under Iowa law and that a small power producer is allowed to use some or all of its output.

On August 3, 2000, the Board issued an order to consider adopting amendments to 199 IAC 15.1 and 15.11(5). The proposed rule making was published in IAB Vol. XXIII, No. 4 (8/23/00) p. 363, as ARC 0071B. The Consumer Advocate Division of the Department of Justice, Alliant Energy (Alliant), and MidAmerican Energy Company filed written statements of position. All those filing statements, except Alliant, supported the adoption of the proposed amendments. An oral presentation was held on September 27, 2000. All those filing written statements participated.

The definition of "qualifying facility" in rule 199—15.1(476) currently provides that an alternate energy production facility under Iowa law may not be a PURPA qualifying facility. The amendment eliminates this restriction. In fact, Iowa Code section 476.42(1) states that a qualifying facility is not precluded from being an

alternate energy production facility under Iowa law. The current rule, contrary to the statute, inadvertently excludes alternate energy production facilities under Iowa law from also being PURPA qualifying facilities.

Alliant expressed concern that changing the definition will create ambiguity because different rules apply to PURPA qualifying facilities and alternate energy production facilities under Iowa law. While a facility that is both a PURPA and state facility may have additional requirements to meet, the requirements do not conflict. The amendment does not create an ambiguity and in fact makes the rule consistent with the Iowa Code section 476.42(1).

The second paragraph of subrule 15.11(5) is ambiguous because it arguably can be read to require a small power producer to sell all of its production to the host utility. This is not the intent of the rule. The rule emphasizes choice for the facility and was not intended to require a producer to sell all of its output to the utility. A producer should be allowed to use some or all of its output and the amendment clarifies this intent.

The amendment eliminates any potential ambiguity. In adopting this amendment, the Board recognizes that subrule 15.11(5) is the subject of pending litigation. The Polk County District Court found the first paragraph of the rule, which concerns net billing and is not being amended, to be preempted by federal law. The Board and the Consumer Advocate Division of the Department of Justice appealed this ruling to the Iowa Supreme Court (MidAmerican Energy Company v. Iowa Utilities Board, S.Ct. No. 99-1529). However, the Board notes that its interpretation of the second paragraph of the rule is consistent with the District Court's discussion

(MidAmerican Energy Company v. Iowa Utilities Board, Nos. AA 3173, AA 3195, AA 3196 (8/26/99, Polk County District Court)). The Board does not believe the District Court's decision invalidated the second paragraph of the rule.

Alliant commented that the words "any electricity" should be changed to "all electricity." This change would negate the intent of the rule, which is to make clear that an alternate energy producer can consume some or all of its output and does not have to sell its entire output to the host utility. The Board rejected similar arguments made by Alliant in an August 4, 2000, decision in Docket No. C-00-171, In Re: Eldora-New Providence Community School District.

The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board's general waiver provision in rule 199—1.3(17A,474) is applicable to these rules.

These amendments are intended to implement Iowa Code sections 476.1 and 476.41.

The amendments will become effective on December 6, 2000.

The following amendments are adopted.

Item 1. Amend rule 199—15.1(476), definition of "qualifying facility," as follows:

"Qualifying facility" means a cogeneration facility or a small power production facility which is a qualifying facility under 18 CFR Part 292, Subpart B, ~~and which is not a qualifying alternate energy production facility or a qualifying small hydro facility.~~

Item 2. Amend subrule 15.11(5), second paragraph, as follows:

In the alternative, by choice of the facility, the electric utility and facility shall operate in a ~~simultaneous~~ purchase and sale arrangement whereby ~~all~~ any electricity ~~produced~~ provided to the utility by the qualifying facility is sold to the utility at the fixed or negotiated buy-back rate, and ~~all~~ any electricity ~~used by~~ provided to the qualifying facility by the utility is sold to the facility at the tariffed rate.

October 11, 2000

/s/ Allan T. Thoms

Allan T. Thoms
Chairman